

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JEREMIAH GARY,

Petitioner,

vs.

9:06-CV-0248

SUPERINTENDENT JAMES CONWAY,
Attica Correctional Facility,

Respondent.

APPEARANCES

OF COUNSEL:

JEREMIAH GARY
03-B-2608
Petitioner *pro se*

HON. ANDREW M. CUOMO
Attorney for Defendant
Office of the Attorney General
120 Broadway
New York, NY 10271

LUKE MARTLAND, ESQ.

DAVID N. HURD
United States District Judge

ORDER

Jeremiah Gary ("Gary" or "Petitioner") filed a Petition for a Writ of Habeas Corpus with the Court which was recommended denied and dismissed by the Report-Recommendation of Magistrate Judge David R. Homer. Docket No. 11. That Report-Recommendation was approved, and the Petition dismissed by Decision and Order of this Court filed July 17, 2007. Docket No. 18. Gary has appealed the dismissal to the Second Circuit and now seeks a Certificate of Appealability ("COA"). Docket No. 21.

28 U.S.C. § 2253(c)(1) provides in relevant part that:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.¹

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of the file in this action, and for the reasons set forth in the April 9, 2007 Report and Recommendation, and this Court's July 17, 2007 Order, the Court finds that Gary has failed to make such a showing. Therefore, the Court denies his request.

THEREFORE, it is

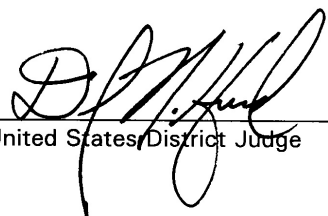
ORDERED, that

1. Petitioner's Application for a Certificate of Appealability (Docket No. 21) is DENIED; and

2. The Clerk of the Court is directed to serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: August 30, 2007
Utica, New York.


United States District Judge

¹ Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." See Fed.R.App.P. 22(b).